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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Richard R. Day,  
10 Petitioner,  
11 vs.  
12 Charles L. Ryan, et al.,  
13 Respondents.  
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No. CV 13-952-PHX-GMS (JFM)

**ORDER**

15 Petitioner Richard R. Day, who is confined in the Arizona State Prison Complex-  
16 Tucson, has filed a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.  
17 § 2254 (Doc. 1) and has paid the \$5.00 filing fee. The Court will require an answer to the  
18 Petition.

19 **I. Petition**

20 Petitioner was convicted in Maricopa County Superior Court, case #CR 2003-  
21 014613-001, of First-Degree Murder and was sentenced to a term of imprisonment of 25  
22 years to life. In his Petition, Petitioner names Charles L. Ryan as Respondent and the  
23 Arizona Attorney General as an Additional Respondent.

24 Petitioner raises two grounds for relief:

- 25 (1) Petitioner received ineffective assistance of counsel; and  
26 (2) The prosecution withheld potentially exculpatory evidence in violation of  
27 *Brady v. Maryland*.

28 It is unclear whether Petitioner has exhausted these claims in state court.

1 However, even if the exhaustion requirement has not been met, it appears that any  
2 unexhausted claims may be procedurally barred. In light of the possibility of procedural  
3 bar, a summary dismissal would be inappropriate. *See Castille v. Peoples*, 489 U.S. 346,  
4 351-52 (1989) (remanding where petitioner failed to exhaust claims and it was not clear  
5 whether the claims were procedurally barred). Accordingly, the Court will require  
6 Respondents to answer the Petition. 28 U.S.C. § 2254(a).

## 7 **II. Warnings**

### 8 **A. Address Changes**

9 Petitioner must file and serve a notice of a change of address in accordance with  
10 Rule 83.3(d) of the Local Rules of Civil Procedure. Petitioner must not include a motion  
11 for other relief with a notice of change of address. Failure to comply may result in  
12 dismissal of this action.

### 13 **B. Copies**

14 Petitioner must serve Respondents, or counsel if an appearance has been entered, a  
15 copy of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a  
16 certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also,  
17 Petitioner must submit an additional copy of every filing for use by the Court. LRCiv  
18 5.4. Failure to comply may result in the filing being stricken without further notice to  
19 Petitioner.

### 20 **C. Possible Dismissal**

21 If Petitioner fails to timely comply with every provision of this Order, including  
22 these warnings, the Court may dismiss this action without further notice. *See Ferdik v.*  
23 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action  
24 for failure to comply with any order of the Court).

## 25 **IT IS ORDERED:**

26 (1) The Clerk of Court must serve a copy of the Petition (Doc. 1) and this  
27 Order on the Respondent and the Attorney General of the State of Arizona by certified  
28 mail pursuant to Rule 4, Rules Governing Section 2254 Cases.

1 (2) Respondents must answer the Petition within 40 days of the date of service.  
2 Respondents must not file a dispositive motion in place of an answer but may file an  
3 answer limited to relevant affirmative defenses, including but not limited to, statute of  
4 limitations, procedural bar, or non-retroactivity. If the answer is limited to affirmative  
5 defenses, only those portions of the record relevant to those defenses need be attached to  
6 the answer. Failure to set forth an affirmative defense in an answer may be treated as a  
7 waiver of the defense. *Day v. McDonough*, 547 U.S. 198, 209-11 (2006). If not limited  
8 to affirmative defenses, the answer must fully comply with all of the requirements of  
9 Rule 5 of the Rules Governing Section 2254 Cases.

10 (3) Petitioner may file a reply within 30 days from the date of service of the  
11 answer.

12 (4) This matter is referred to Magistrate Judge James F. Metcalf pursuant to  
13 Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a  
14 report and recommendation.

15 Dated this 7th day of August, 2013.

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18 G. Murray Snow  
19 United States District Judge  
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